

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patention Application of:
Noriyuki SATO et al.

Application No. 10/563,916

Confirmation No. 5447

Filed: January 10, 2006

Art Unit: 1643

For: HLA-A24 BINDING CANCER ANTIGEN
PEPTIDE DERIVED FROM LIVIN

Examiner: Huff, Sheela Jitendra

REQUEST FOR RECONSIDERATION OF PATENT
TERM ADJUSTMENT UNDER 37 CFR § 1.705 (d)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Madam:

Pursuant to CFR § 1.705 (d), the Patentee hereby requests reconsideration of the patent term adjustment indicated on the Notice of Allowance for the above-identified application. Specifically, while the Notice of Allowance indicates a patent term adjustment of 97 days, Patentee submits that the patent term adjustment should correctly be 268 days.

STATEMENT OF FACTS

1. The Determination of Patent Term Adjustment portion of the Notice of Allowance issued in this case on December 17, 2008 indicated that the Patent Term Adjustment to date was 97 days, (see Exhibit 1).
2. The U. S. Patent and Trademark Office's Patent Term Adjustment History, as indicated in the Patent Application Information Retrieval (PAIR) system, indicates a Patent Term Adjustment due to prosecution delays of 97 days, based upon 192 days of USPTO delays minus 95 days of Applicant delay (see Exhibit 2).

3. However, the PAIR system does not indicate any Patent Term Adjustment due to the USPTO failure to issue a patent within three (3) years (36 months) from the actual filing date of the application, January 10, 2006 (37 C.F.R. § 1.702(b)), which delay was 171 days.
4. In accordance with the recent District Court decision in *Wyeth et al. v. Dudas*, 88 USPQ2d 1538 (D.D.C. 2008), the correct Patent Term Adjustment should be 192 days of prosecution delay, minus 95 days of Applicant delay, plus 171 days for the failure of the USPTO to issue a patent within three (3) years of the actual filing date of the application (37 C.F.R. § 1.702(b)), for a total of 268 days of Patent Term Adjustment (see Exhibit 3).
5. Accordingly, Patentee hereby requests that the U. S. Patent and Trademark Office correct the calculation of the Patent Term Adjustment for the above-identified patent to 268 days.

**COMPLIANCE WITH REQUIREMENTS OF
37 CFR § 1.705 (b)(1) AND (2)**

6. A statement of facts is presented above, detailing the relevant dates and the correct patent term adjustment.
7. The present patent is not subject to any Terminal Disclaimer or any expiration date specified in a Terminal Disclaimer (§ 1.705(b)(2)(iii)).
8. There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the above-identified application (§ 1.705(iv)(B)).

CONCLUSION

The USPTO is requested to correctly indicate that U.S. Patent Application No. 10/563,916 is entitled to 268 days of Patent term Adjustment.


PAYMENT OF FEES

As set forth in the attached Fee Transmittal, the Commissioner is hereby authorized to charge the amount of \$200.00 to Deposit Account No. 02-2448 for the consideration of this Request as required by 37 C.F.R. § 1.18(e).

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required.

Dated: March 16, 2009

Respectfully submitted,

By 
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Attachments:

- Exhibit 1 – Notice of Allowance
- Exhibit 2 – Patent Term Adjustment History From PAIR
- Exhibit 3 – Output of AIPA Term Calculator